

FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

**RAMON HUMBERTO GASPAR-
HERNANDEZ,**

Defendant.

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8:04CR292

MEMORANDUM AND ORDER

This matter is before the court on initial review of defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (§ 2255 motion) (Filing No. 50).

Under Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts*, the court will conduct initial review of the issues raised in defendant's § 2255 motion. Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process:

The motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the United States Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.

After pleading guilty to Count I of an Information charging defendant with Conspiracy to Distribute and Possession with Intent to Distribute Methamphetamine in violation of 21

U.S.C. § 846, defendant was sentenced to 121 months in the custody of the Bureau of Prisons followed by five years supervised release. Defendant filed a direct appeal with the Eighth Circuit arguing that the district court erred by not granting safety-valve relief and sentencing defendant to the low end of the resulting Guidelines range of 108-135 months' imprisonment. The Eighth Circuit affirmed the judgment of the district court.

On May 8, 2006 defendant filed his § 2255 motion with this court. The United States shall answer the defendant's claims raised in his § 2255 motion. In addition to any other issues raised in the Answer, the United States shall address whether the defendant's claims are barred by procedural default, waiver, or untimeliness.

IT IS ORDERED:

1. That upon initial review, the court finds and concludes that summary dismissal of the defendant's § 2255 motion (Filing No. 50) is not appropriate;
2. That by July 31, 2006 the United States shall answer or otherwise respond to the defendant's § 2255 motion, and shall file an accompanying brief; and
3. That by August 31, 2006 the defendant may file a reply brief.

DATED this 20th day of June, 2006.

BY THE COURT:

s/ Joseph F. Bataillon
JOSEPH F. BATAILLON
United States District Judge